

STATE OF INDIANA – COUNTY OF ELKHART  
IN THE ELKHART CIRCUIT AND SUPERIOR COURTS

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**Notice of Proposed New Local Rule and Amendments,  
Finding Good Cause to Deviate From Established Schedule,  
and Request for Supreme Court Approval  
April 7, 2014**

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The Judges of the Elkhart Circuit and Superior Courts, pursuant to Trial Rule 81(B), give notice of an amendment to the local court rule at **LR20-AR00-NAFC-2**, a proposed new rule concerning **the selection of special judges in civil cases** at **LR20-TR79-NAFC-2.1**, find good cause to deviate from the schedule for amending local rules under Trial Rule 81(D), and request Supreme Court approval. New text is shown by underlining and deleted text is shown by ~~striking through~~.

Notice has been given to the public by posting at the Clerk's Office and on the website of the Elkhart County Clerk, if available, and on the Indiana Judicial Website, and by furnishing a copy to the officers of the Elkhart City Bar Association and the Goshen City Bar Association.

Comments may be made until **May 7, 2014** to: George Biddlecome, Judge Elkhart Superior Court 3, 101 N. Main St., Elkhart, IN 46514, or by email to: [gbiddlecome@elkhartcounty.com](mailto:gbiddlecome@elkhartcounty.com).

The rule amendment and new rule will be effective on **May 12, 2014**.

DATED this 7th day of April, 2014 on behalf of the Judges of Elkhart County.

/s/ George Biddlecome  
George Biddlecome, Judge

## **LR20-AR00-NAFC-2 FILING OF CASES**

### **(A) GENERAL**

All new causes of action shall be docketed with the Clerk of the Court and shall comply with Trial Rule 77 and Administrative Rule 9.

### **(B) COURT COSTS**

No cause shall be docketed or transferred without payment of the costs of the action, unless otherwise ordered.

#### **1) COLLECTION OF FEE FOR LATE PAYMENT**

A) A late fee is assessed to the defendant if the defendant has:

- committed a crime;
- violated a statute defining an infraction;
- violated an ordinance of a municipal corporation; or
- committed a delinquent act, and the defendant is required to pay:
  - court costs, including fees;
  - a fine; or
  - a civil penalty, and the defendant is not determined by the court imposing the court costs, fine, or civil penalty to be indigent.

B) If the defendant fails to pay to the clerk the costs, fine, or civil penalty in full before the late of the following:

- The end of the business day on which the court enters the conviction or judgment.
- The end of the period specified by the Court.

C) The fee assessed is \$25.00 or, if amended, that sum allowed by I.C. 33-37-7-22.

D) The court may, if the defendant has demonstrated good cause for failure to make a timely payment of court costs, a fine, or a civil penalty may suspend the payment of the late fee.

(C) **ASSIGNMENT OF CRIMINAL CASES**

1) Criminal cases shall be filed in specific courts as follows:

**a. Elkhart Circuit Court**

- ☐ All murder charges;
- ☐ All attempted murder cases, except child victim cases
- ☐ All manslaughter cases, except those in which a child is the victim
- ☐ All vehicular homicide cases
- ☐ All robbery cases
- ☐ All reckless homicide cases
- ☐ One-half (1/2) of all Class A, B and C controlled substance sale and possession cases
- ☐ Juvenile cases (Magistrate)
- ☐ Grand Jury cases

**b. Elkhart Superior Court 1**

- ☐ All rape cases, except child victim cases
- ☐ all criminal deviate conduct cases, except child victim cases
- ☐ All sexual battery cases, except child victim cases
- ☐ All criminal recklessness cases, except when a child is the victim
- ☐ All C battery and domestic battery cases, except child victim cases, and except those filed in the three (3) city courts sitting in Elkhart County, Indiana
- ☐ All class B felony cases which are not specifically assigned to a court pursuant to this rule

**c. Elkhart Superior Court 2**

- ☐ All burglary cases
- ☐ All welfare fraud cases
- ☐ All forgery cases
- ☐ All class C felony theft cases
- ☐ All arson cases
- ☐ All class C felony cases which are not specifically assigned to a court pursuant to this rule

**d. Elkhart Superior Court 3**

- ☐ All child victim cases except murder
- ☐ One-half (2) of all class A, B and C controlled substance sale and possession cases
- ☐ All kidnapping and confinement cases
- X All Class A felony cases which are not specifically assigned to a court pursuant to this rule

**e. Elkhart Superior Court 4**

- ☐ One-half (2) of all habitual traffic offender cases and one-third (1/3) of all other class D felony and misdemeanor cases, except non-support cases and those filed in the three (3) city courts sitting in Elkhart County, Indiana.
- ☐ All infraction and county ordinance cases other than those filed in the aforementioned city courts

**f. Elkhart Superior Court 5**

- ☐ One-half (2) of all habitual traffic offender cases and one-third (1/3) of all other class D felony and misdemeanors, except non-support cases and those cases filed in the aforementioned city courts

**g. Elkhart Superior Court 6**

- ☐ All non-support cases and one-third (1/3) of all class D felony and misdemeanor cases, except habitual traffic offender cases and those cases filed in the aforementioned city courts

- 2) Should a criminal case be pending in a given court, and should an equally serious or less serious criminal case against the same defendant be received by the Prosecutor's Office for filing, the more recently submitted cases shall be filed in the same court as that in which the existing case is pending. In the event that a criminal charge is pending against a given defendant in a given court, and in the further event that a judgment of conviction or acquittal has not yet been entered in that case, and in the further event that, pursuant to the dictates of this Rule, a criminal charge carrying a more severe penalty is filed in another Elkhart County Court, the criminal charge carrying the less severe penalty shall be transferred to the Court in which the other charge has been filed. All cases originally filed as a lesser offense, and subsequently recharged as murder, shall thereupon be transferred to Circuit Court. All cases which may be filed in more than one court (e.g. Class A, B and C controlled substances cases) shall be filed on a purely rotating basis. The provisions of Rule 2(B)(2) do not apply to domestic battery cases.
- 3) All cases in which juvenile court jurisdiction is waived to adult court shall be filed in the appropriate court as dictated by this rule.
- 4) All charges of escape shall be filed in the court which committed the defendant to the facility from which he or she allegedly escaped. All charges of failure to appear shall be filed in the court in which the subject order to appear was entered.

- 5) After January 1, 2003, in the event that the Judge of the Elkhart Circuit Court recuses himself in a given case due to a real or apparent conflict of interest, that case shall be transferred to the Elkhart Superior Court 3. IN the event that the Judge of the Elkhart Superior Court 3 recuses himself in a given case due to a real or apparent conflict of interest, that case shall be transferred to Elkhart Circuit Court. In the event that the Judge of the Elkhart Superior Court 1 recuses himself in a given case due to a real or apparent conflict of interest, that case shall be transferred to Elkhart Superior Court 2. In the event that the Judge of the Elkhart Superior Court 2 recuses himself in a given case due to a real or apparent conflict of interest, that case shall be transferred to the Elkhart Superior Court 1. In the event that the Judge of the Elkhart Superior Court 4 recuses herself in a given case due to a real or apparent conflict of interest, that case shall be transferred to Elkhart Superior Court 5. In the event that the Judge of the Elkhart Superior Court 5 recuses himself in a given case due to a real or apparent conflict of interest, that case shall be transferred to Elkhart Superior Court 6. In the event that the Judge of the Elkhart Superior Court 6 recuses himself in a given case due to a real or apparent conflict of interest, that case shall be transferred to Elkhart Superior Court 4.
- 6) All requests for a jury trial in the Elkhart City Court shall be transferred to Elkhart Superior Court 5.
- 7) All other city courts receiving requests for jury trial shall be transferred to Elkhart Circuit Court for assignment to an appropriate court or magistrate.
- 8) All requests for trial de novo shall be referred to Elkhart Circuit Court for assignment to an appropriate court or magistrate.

*(Amended effective July 1, 2012)*

**(D) ASSIGNMENT OF CIVIL CASES**

- 1) Civil cases shall be filed in specific courts as follows:
  - a. **Elkhart Circuit Court**  
All civil filings with the exception of mental health cases and small claims.  
Juvenile paternity except those filed in Superior Court 6.  
Juvenile CHINS and termination cases (Elkhart Circuit Court, Juvenile Division).
  - b. **Elkhart Superior Court 1**  
All civil filings with the exception of mental health cases and small claims.  
Juvenile paternity except those filed in Superior Court 6.
  - c. **Elkhart Superior Court 2**  
All civil filings with the exception of guardianships and small claims.  
Juvenile paternity except those filed in Superior Court 6.

**d. Elkhart Superior Court 3**

All civil filings except guardianships and small claims.

**e. Elkhart Superior Court 4**

All civil filings except guardianship, estates, mental health paternity and dissolution cases.

**f. Elkhart Superior Court 5**

All civil filings except guardianships, estates, mental health paternity and dissolution cases.

**g. Elkhart Superior Court 6**

All civil filings except guardianships, estates and mental health.

**(E) TRANSFER & REFERRAL OF CASES**

- 1) Whenever a judge is designated Special Judge in a case filed in another court, the designated Special Judge hereby consents to the transfer of the case and the transferring Court may so note in its order of transfer.
- 2) A case may be transferred on the court's own motion to a court of equal jurisdiction within Elkhart County. Whenever an action is transferred to another court, the Judge of the transferee court hereby consents to the transfer of the case and the transferring Court may so note in its order of transfer.
- 3) A case referred to a magistrate shall be referred on specific issue(s) to be heard by the magistrate. Upon entry of an order by the magistrate or approval of an agreement of the parties on said issue(s), the case will be returned to the regular judge of the court.
- 4) ~~When the Judge of the Elkhart Circuit Court enters an order recusing himself due to a conflict of interest in a felony case, said case shall be assigned to the Senior Judge, as approved by the Indiana Supreme Court. The Senior Judge shall accept and retain jurisdiction for all future proceedings unless disqualified under the Code of Judicial Conduct, excused from service by the Indiana Supreme Court, a specific statute or rule provides to the contrary, or the Senior Judge is unavailable by reason of death, sickness or unwillingness to serve. If further reassignment is required, it shall be in the same manner as set forth in the rules of criminal procedure. Upon recusal, the Clerk shall complete the process for transfer to the Senior Judge. An oath or special order accepting jurisdiction shall NOT be required.~~
- 5) ~~If a selected judge cannot serve, reassignment of the case shall be determined by the Administrative Judge for Administrative District 5, in compliance with Indiana Trial Rule 79(H), as adopted by the courts in Administrative District 5.~~

**(F) DELINQUENT LISTS**

- 1) Any civil case pending for more than six months may be placed upon a Delinquent List pursuant to Trial Rule 41(E). Any case so listed shall, after 45 days, be dismissed at the cost of the filing party, except for good cause shown. Any case so dismissed shall be deemed to have been dismissed with prejudice as to all parties, unless otherwise ordered.
- 2) Any probate matter in which no filing has been made for more than one year may be placed upon a Delinquent List. If no action is taken within 45 days thereafter, the Court may require the personal representative to show cause why the Court should not impose an appropriate sanction against the personal representative.
- 3) Guardianships shall not be placed upon a delinquent list within two years after the issuance of letters of guardianship, the filing of an inventory, or the filing of a current account.

**LR20-TR79-NAFC-2.1**

**SELECTION OF SPECIAL JUDGES IN  
CIVIL CASES**

If a judge in Elkhart County grants a motion for change of judge under TR 76, or recuses or is disqualified under TR 79(C), and the parties are unable to agree to a judge, or the judge agreed upon does not accept the appointment within the time required by TR 79(D), the following local rule applies:

1. If the case is in Elkhart Circuit Court, it must be transferred to Elkhart Superior Court 3.
2. If the case is in Elkhart Superior Court 3, it must be transferred to Elkhart Circuit Court.
3. If the case is in Elkhart Superior Court 1, it must be transferred to Elkhart Superior Court 2.
4. If the case is in Elkhart Superior Court 2, it must be transferred to Elkhart Superior Court 1.
5. If the case is in Elkhart Superior Court 4, it must be transferred to Elkhart Superior Court 5.
6. If the case is in Elkhart Superior Court 5, it must be transferred to Elkhart Superior Court 6.
7. If the case is in Elkhart Superior Court 6, it must be transferred to Elkhart Superior Court 4.

If, after the above transfer, the judge of the transferee court is unable to hear the case, the Chief Judge of the administrative judicial district of which Elkhart County is a member, must appoint a special judge from the judicial district. If the Chief Judge of the administrative judicial district is unable to make the appointment, the district judge who is not a judicial officer in Elkhart County with the most time of judicial service shall make the appointment.

The appointed judge under this local rule must accept the case unless 1) disqualified under the Code of Judicial Conduct, 2) ineligible under the Trial Rules, or 3) excused by the Indiana Supreme Court.

(Added effective May 12, 2014)